

KEITA (Migration) [2019] AATA 6862 (18 December 2019)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Mr Alhassane KEITA
CASE NUMBER:	1711342
DIBP REFERENCE(S):	BCC2015/2120744
MEMBER:	Hugh Sanderson
DATE:	18 December 2019
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision to cancel the applicant's Subclass (155) (Five Year Resident Return) visa.

Statement made on 18 December 2019 at 8:54am

CATCHWORDS

MIGRATION – cancellation – Subclass 155 (Five Year Resident Return) – failure to advise changes in circumstances – incomplete application – incorrect answers - exclusive and genuine relationship – ‘mere conjecture and speculation’ and this is not sufficient in light of the repercussions – lack of understanding of English led him to be deceived about some questions – cancellation was outweighed by the considerations in favour of cancelling his visa – decision under review affirmed

LEGISLATION

Migration Act 1958 (Cth), ss 5F, 101(a) and (b), 104, 109(1), 375A

CASE

MIAC v Khadgi (2010) 190 FCR 248

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to cancel the applicant's Subclass (155) (Five Year Resident Return) visa under s.109(1) of the *Migration Act 1958* (the Act).
2. The delegate cancelled the visa on the basis that the applicant did not complete his visa application correctly and failed to advise the Department of Immigration of changes in his circumstances. The issue in the present case is whether that ground for cancellation is made out, and if so, whether the visa should be cancelled.

Background

3. The applicant is a citizen of Guinea and is currently 45 years old. The applicant was granted a Subclass 801 Partner (Residence) visa on the basis of his claimed relationship with Mariama Bah. Ms Bah first entered Australia in 2000. She was then given the right to reside permanently in Australia. She is now an Australian citizen.
4. The applicant claimed he first met Ms Bah in Guinea in 1999. He was, at that time, married and there are two children of that relationship: Dalanda who is currently 20 years old and Elh Amandou who was currently 22 years old. It was claimed the applicant's wife died on 4 November 1999 in a car accident. It was claimed that before Ms Bah travelled to Australia, the applicant had proposed marriage to her and she had accepted. It was claimed they remained in an exclusive and genuine relationship after that time.
5. The applicant and his children applied for a Subclass 300 Prospective Marriage visa on 5 September 2003. This application was initially refused by the Department, however, was remitted by the Tribunal (differently constituted) on review. The applicant was granted the Subclass 300 Prospective Marriage visa on 13 June 2007 and entered Australia soon after that. He then applied for a Subclass 820 Partner (Temporary) visa and Subclass 801 Partner (Residence) visa. After being granted the Subclass 820 Partner (Temporary) visa he provided further information as to his continuing relationship with the sponsor and was granted the Subclass 801 Partner (Residence) visa on 16 February 2010. The applicant has travelled overseas on a number of occasions and has subsequently been granted a Subclass 155 Resident Return visa.
6. The Department became aware of information which indicated that the applicant had not completed his applications for the Prospective Marriage visa and Partner visa correctly by failing to complete all questions and providing incorrect answers in those applications, thereby not complying with s.101(a) and (b) of the Act. The delegate was also concerned the applicant had failed to advise the Department of changes in his circumstances after he had lodged his Prospective Marriage visa application. On that basis the applicant appeared to have failed to comply with s.104 of the Act. The Department wrote to the applicant on 24 March 2017 with a notice of intention to consider cancelling his visa under s.109 of the Act.
7. The information provided by the Department at that time was as follows:
 - i. The applicant applied for the Class TO Prospective Marriage visa in September 2003 on the basis of his relationship with Ms Mariama Sonah Bah.

- ii. The applicant completed Form 47SP in support of that application. At Question 53 of Form 47SP the applicant was required to give details of his partner's family. The applicant referred to his partner's parents and brother. He did not provide a response in relation to his partner's children and left this field blank.
- iii. The applicant submitted Form 40SP Sponsorship completed by the sponsor. At Question 32 of Form 40SP Ms Bah stated that she had no children.
- iv. The applicant submitted a further Form 40SP on 13 June 2007 completed by Ms Bah and signed on 29 May 2007. Ms Bah stated in that form that she and the applicant began a spousal relationship in 1999 in Guinea. Ms Bah gave her residential address as an address in Revesby.
- v. Ms Bah stated in response to Question 37 that she had no dependents. The box where she was required to list the number of her dependent children was left blank. When listing the people who lived in her house she only disclosed one person who she said was a friend. She did not disclose the fact that she had any children living with her.
- vi. On 13 June 2007 the applicant was granted the Class TO Prospective Marriage visa. The applicant and his children entered Australia on 7 August 2007 and gave their address as an address in Revesby on the Incoming Passenger Cards. He did not disclose to the Department that the sponsor had two children prior to his entry to Australia.
- vii. On 29 October 2007 the applicant made the application for the Class UK and Class BS Partner visas, which included his dependent children. The applicant was sponsored in that application by Ms Bah.
- viii. The applicant completed another Form 47SP in support of that application. At Question 65, the question concerning his partner's children, the applicant did not provide a response and left the answer blank.
- ix. Question 70 of Form 47SP asks about when and where the applicant began a spousal relationship with his partner and requires the parties to be in a genuine and continuing relationship and have a mutual commitment to a shared life to the exclusion of all others. The applicant did not provide a response to Question 70 and left the answer blank.
- x. At Question 37 of Form 40SP signed on 22 October 2007 Ms Bah stated she had no dependents. The box where she was required to list the number of her dependent children was left blank.
- xi. On the basis of the information submitted by the applicant and the sponsor, the applicant was granted the Subclass 820 Class UK Partner visa on 5 December 2007.
- xii. In September 2009 the applicant provided to the Department a Statutory Declaration in support of his application for the Subclass 801 Class BS Partner (Residence) visa, dated 15 September 2009. In that declaration, the applicant referred to his address as an address in Revesby. He stated that he had a commitment to a shared life as husband and wife with Ms Bah to the exclusion of all others and that the relationship was genuine and continuing.
- xiii. The applicant also provided a Statutory Declaration by Ms Bah, dated 15 September 2009. In that declaration, Ms Bah referred to her address as an address in Revesby.

She stated that she had a commitment to a shared life as husband and wife with the applicant to the exclusion of all others and that the relationship was genuine and continuing.

- xiv. On the basis of the information submitted by the applicant and the sponsor, the applicant was granted the Subclass 801 Class BS Partner (Residence) visa on 16 February 2010.
 - xv. On 18 December 2013 the applicant lodged an application to sponsor a new partner, Ms Aminata Bah, for a Partner visa. He stated in that application that his relationship with his sponsor Mariama Sonah Bah ceased on 31 July 2011 and he included a copy of the Divorce Order which stated the date of separation as 1 March 2010. This was two weeks after the applicant was granted the Subclass 801 Partner (Residence) visa.
 - xvi. On 22 July 2015 the applicant was granted the Subclass 155 Resident Return visa.
 - xvii. Information received by the Department indicated that Mariama Sonah Bah gave birth to twins on 9 November 2004. Birth certificates for the children list their mother as Mariama Sonah Bah and their father as Ahmed Tejan Bah. Both were stated to reside in Riverwood.
 - xviii. On 5 September 2007 Mariama Sonah Bah gave birth to a third child. The child's birth certificate lists Mariama Sonah Bah as the mother and Ahmed Tejan Bah as the father. The address of the parents was stated as an address in Revesby, the same address as previously identified by the applicant in his communication with the Department as where he claimed to have been living with the sponsor.
 - xix. On 3 January 2011 Ms Bah gave birth to a fourth child. The child's birth certificate lists Mariama Sonah Bah as the mother and Ahmed Tejan Bah as the father. The birth certificate lists the Revesby address for Ms Bah and a different address for Mr Ahmed Tejan Bah.
 - xx. On 4 September 2013 Ms Bah gave birth to a fifth child. The child's birth certificate lists Mariama Sonah Bah as the mother and Ahmed Tejan Bah as the father. The birth certificate identifies the Revesby address for both Ms Bah and Ahmed Tejan Bah.
8. In response to the notice, the applicant's agent provided submissions which included the following claims:
- The applicant had no knowledge that the sponsor had given birth to the twins because he did not have direct knowledge of what was happening in Australia;
 - The applicant did not know the sponsor had children at that time;
 - The birth certificates provided may have been based upon fraudulent information provided by Ms Bah and Ahmed Tejan Bah and the sponsor was not in a de facto relationship with Ahmed Tejan Bah;
 - There is no information apart from the birth certificates, which the applicant believed to be fraudulently obtained, to indicate the sponsor was in a de facto relationship with Ahmed Tejan Bah;

- The applicant did not understand the nature of the questions posed to him as English is not his first language;
- The applicant did not know what the definition of a 'dependent' was and so did not disclose the children of the sponsor;
- Even if Ahmed Tejan Bah was living with the sponsor, that does not mean that they were living together in a de facto relationship and this is a common practice in the African community;
- If the sponsor had a sexual relationship with Ahmed Tejan Bah that again does not mean they were necessarily in a de facto relationship;
- The sponsor and Ahmed Tejan Bah may have had a sexual relationship with each other to conceive several children together, but this does not mean they were in a de facto relationship; and
- The applicant was always in a genuine and exclusive relationship with the sponsor.

9. In respect of the discretionary factors, the applicant's agent made submissions as to why the visa should not be cancelled, including the following:

- The applicant and his children have lived in Australia since 2007 and are now well-established in Australia;
- It is in the best interests of the applicant's children that they not be removed to Guinea as it would disadvantage their health, education and employment opportunities;
- The applicant's children are 'innocent third parties' and should not be disadvantaged by the cancelling of the applicant's visa;
- The applicant has been a good citizen in Australia and has not been convicted of any criminal offences;
- The Department are proceeding on 'mere conjecture and speculation' and this is not sufficient in light of the repercussions that would face the applicant; and
- The applicant frankly answered the questions in the application, but his lack of understanding of English led him to be deceived about some questions.

10. The delegate who considered the application found that the applicant had failed to comply with the requirements of s.104 of the Act in respect of his Subclass 300 Prospective Marriage visa. The delegate found that after lodging that application, where he stated the sponsor did not have any children or dependents, the sponsor had subsequently given birth to twins prior to the applicant arriving in Australia. The applicant failed to advise the Department of this change of circumstance at any time.

11. The delegate found the applicant had failed to comply with s.104 of the Act by failing to advise the Department that he was no longer in a relationship with the sponsor as she was in a de facto relationship with Ahmed Tejan Bah as evidenced by the fact that she had twins to him and was living with him in a de facto relationship.

12. The delegate found the applicant had failed to comply with s.101(a) of the Act when he failed to answer Question 70 of the Form 47SP and Question 12 of the Form 40SP by failing to

provide an answer as to when the relationship began because the applicant was not in a relationship with the sponsor to the exclusion of all others.

13. The delegate found the applicant had failed to comply with s.101(b) of the Act on the following occasions:
 - By claiming at Question 12 of the Form 40SP in support of the application for a Prospective Marriage visa that he and the sponsor were in a relationship to the exclusion of all others;
 - By claiming at Question 37 of the Form 40SP for the Partner visa that the sponsor had no dependents as she had given birth to twins on 9 November 2004 and another child on 5 September 2007;
 - By claiming at Question 60 of the Form 47SP for the Partner visa that the sponsor had not previously been in a de facto relationship when she was and continued to be in a de facto relationship with Ahmed Tejan Bah;
 - By failing to provide details of the sponsor's three children at Question 65 of the Form 47SP and Question 37 of the Form 40SP lodged with the Partner visa application when he failed to disclose the applicant's children or dependents; and
 - By claiming in a statutory declaration dated 15 September 2009 that he and the sponsor had a commitment to a shared life as husband and wife to the exclusion of all others when the sponsor was in a continuing de facto relationship with Ahmed Tejan Bah and had, at that time, three children with him and then had another two children with him after that date.
14. As the delegate found that there had been non-compliance as set out in the notice of intention to consider cancelling the applicant's visa, the delegate then considered the discretionary factors as to whether the visa should be cancelled. The delegate noted the following:
 - The correct information was that the sponsor was in a relationship with Ahmed Tejan Bah and had children with him, both before the arrival of the applicant in Australia and after he arrived in Australia, but the applicant was claiming to be living in a mutually exclusive relationship with the sponsor in Australia;
 - Had the Department known the correct information, the applicant's claims that he genuinely intended to be the spouse of the sponsor and then was the spouse of the sponsor would have been more closely scrutinised and it is unlikely the applicant would have been granted the visas to enter and then reside in Australia;
 - The claims that the applicant was unaware of the children born to the sponsor and Ahmed Tejan Bah are not plausible and it is more probable that the applicant deliberately withheld this information from the Department to ensure his visa was granted to him;
 - The applicant had been living in Australia for almost 10 years and claims to have developed strong social and cultural ties within the Australian community;
 - There was no information which would indicate the applicant has any relationship with the five children of his sponsor, three of whom would have been living with the applicant if he had been in a genuine relationship with the sponsor;

- The applicant is now sponsoring a new partner who resides in Guinea and they claim to have been in a relationship with each other for the past six years;
- The applicant's children are now adults and no information has been provided as to their current circumstances;
- If the applicant's visa is cancelled, the visas of his children will not be subject to cancellation;
- The applicant has not acknowledged any of the non-compliance which the delegate has found;
- There was no other information about non-compliance by the applicant;
- The applicant failed to advise the Department of the birth of the sponsor's twins in November 2004 before he entered Australia and provided incorrect information on multiple occasions between 2007 and 2009 in respect of his Partner visa application;
- There is no information which would indicate the applicant has breached any law in Australia;
- There was no information of any contribution the applicant had made to the Australian community;
- The cancellation of the applicant's visa would have an adverse effect on his children as they would now be separated from him; and
- If the applicant's visa is cancelled he would be likely to be required to return to Guinea which would cause him some hardship, however, he is in a relationship with a woman in Guinea.

15. Taking all these matters into account, the delegate found that the possible hardship to the applicant and his children as a result of the cancellation was outweighed by the considerations in favour of cancelling his visa. Accordingly, the delegate decided to cancel the applicant's visa.

Information to the Tribunal

16. The applicant provided a copy of the Department's decision with his application for a review of that decision.
17. The Tribunal wrote to the applicant on 29 October 2019 inviting him to attend a hearing before the Tribunal. The Tribunal noted the certificate issued pursuant to s.375A of the Act on the Department's file and provided the applicant a copy of that certificate. The applicant was invited to provide submissions on the validity of the certificate. No submissions were provided prior to the hearing in respect of this issue.
18. The applicant appeared before the Tribunal on 11 December 2019 to give evidence and present arguments.
19. The Tribunal again raised the issue of the certificate issued pursuant to s.375A of the Act on the Department's file. The Tribunal noted the gist of the information in the documents subject to the certificate. Any relevant issues which were subject to the certificate would be discussed with the applicant. The applicant did not have any objection to the certificate or in the issues being addressed with him in this manner.

20. The applicant said that he had been living alone in rented accommodation for about two years. For three years before that, he had been living in a share house. For part of that time his son had been living with him. He said that he had been working in a factory since 2011.
21. The applicant said that his son was living in Sydney, but he could not recall the address. He said that he sees him sometimes on the weekend. He said that his son was studying firefighting or construction, he could not remember which, and was working in a restaurant. He said that he had not lived with his son since 2016.
22. The applicant said that his daughter was studying to be a police officer at university, but he did not know the name of the university. He said that she was living somewhere near Blacktown but he did not know the address. He said that he sometimes sees her every two or three weeks. He said that he does not have much contact with his children. He said that it was not easy to see the children because they are both busy with their own lives.
23. The applicant said that the application for his current wife to enter Australia on a Partner visa had been refused. He hoped that once these proceedings were finished he would be able to bring her to Australia. He said that he contacts her every day. She is a student in Guinea. She lives with her grandmother and leads a normal life in Guinea. The applicant said that his sister also lives in Guinea and is married with children. He said that she also leads a normal life there.
24. The applicant said the only contact he has with people in Australia is at work. He said he has no friends or any other contact with people in Australia. He said he does not see much of his children as they are always busy. He said he rings his wife in Guinea every day. The applicant said that he had not broken any law in Australia. He said that apart from his children he does not have any other relatives in Australia.
25. The Tribunal asked the applicant who Ahmed Tejan Bah was. The applicant replied by saying that he never lived with them and the housing commission would confirm that he was not living in the house with them. The applicant said that when he arrived in Australia the sponsor was living by herself. The Tribunal noted that at that time she had twins who were two years old. The applicant said that he forgot about them and they were living with her.
26. The Tribunal went through with the applicant the information in the sponsorship documents and the applications which failed to disclose the fact that the sponsor had twins with Ahmed Tejan Bah before the applicant arrived in Australia and had a third child with Ahmed Tejan Bah after the applicant arrived in Australia.
27. The applicant claimed that he did not know what the sponsor had put in her documents. The Tribunal noted that the sponsor had stated in her sponsorship documents for the Prospective Marriage visa, signed on 29 May 2007, that she had been living with a 'friend'. This indicated that she was living with Ahmed Tejan Bah. The applicant denied the sponsor was ever living with Ahmed Tejan Bah or that Ahmed Tejan Bah or anyone else was living with them in their home.
28. The Tribunal noted the birth certificates for the sponsor's twins and third child showed that the sponsor was living with Ahmed Tejan Bah when those children were born, and when the third child was born in September 2007 this was over the same period that the applicant was claiming he was living in a genuine and continuing and exclusive relationship with the sponsor. The applicant denied that Ahmed Tejan Bah was ever in the home. He said that incorrect information had been put in the birth certificates because Ahmed Tejan Bah was not an Australian citizen. The Tribunal noted the birth certificate for the sponsor's fourth child indicated that the sponsor and Ahmed Tejan Bah were not living in the same address at that time. This indicated that the information as to where Ahmed Tejan Bah had been living at the

time of the birth was correct as he was willing to state at that time he was not living with the sponsor and there would be no reason why he would not also state that fact at the time of the birth of his third child if he was not living with the sponsor. The applicant could not give an explanation for this apart from saying that Ahmed Tejan Bah was not an Australian citizen so he would have provided incorrect information for some reason.

29. The Tribunal noted the applicant had failed to provide any details in the application for the Partner visa about the sponsor's children. This was despite the fact that her twins were at that time almost three years old and her third child had been born less than two months prior to the application being filed. The applicant said that he was confused about the question. He said that when he read the question he was not sure whether he had to provide details of the children of his former wife who was deceased or the sponsor. As he was not sure what to answer, he thought he should leave it blank and then he forgot to fill it out.
30. The Tribunal indicated this was not plausible. The Tribunal noted the applicant was able to provide information about the sponsor's parents and her brother and so as the question repeats the requirement to provide details about 'all your partner's children' he would have been aware that he was required to provide details of the sponsor's children. The applicant repeated that he was confused and was not sure what to answer and then forgot to fill it in. The applicant said that he did not ask anyone to clarify the question. He said that he forgot to do this.
31. The applicant said that if the sponsor did something without his knowledge he is not at fault. He said that he did not have children with other women and he did not appreciate how not providing the information about the sponsor's children would affect him. He said that he did not know he had to tell the Department that the sponsor had twins before he arrived in Australia. He said that he did not know that he should have told the Department she had another child prior to his applying for the Partner visa. The applicant claimed that he had a genuine relationship with the sponsor and she guided him in his application.
32. The Tribunal invited the applicant to provide any information as to why his visa should not be cancelled if the Tribunal found he had not complied with the Act. The applicant said that he had been in Australia for 10 years and would not know what to do if he had to return to Guinea. He said that he was telling the truth when he said that he was married to the sponsor. He said that he did not know much English at the time and relied on Ms Bah to complete the documents. He said that it was not his fault that incorrect information had been provided.
33. The applicant said that it was not useful or the right thing to do to have his visa cancelled. He said that it was not important for Australia for the visa to be cancelled and if he goes back to Guinea it would be very hard for him. He said that he would not be able to support his wife in Guinea as he is doing now. He said that he was very sorry for not informing the Department of the correct information and it would not happen again.
34. For the following reasons, the Tribunal has concluded that the decision to cancel the applicant's visa should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

35. Section 109(1) of the Act allows the Minister to cancel a visa if the visa holder has failed to comply with ss.101, 102, 103, 104, 105 or 107(2) of the Act. Broadly speaking, these sections require non-citizens to provide correct information in their visa applications and passenger cards, not to provide bogus documents and to notify the Department of any incorrect information of which they become aware and of any relevant changes in circumstances.

36. The exercise of the cancellation power under s.109 of the Act is conditional on the Minister issuing a valid notice to the visa holder under s.107 of the Act, providing particulars of the alleged non-compliance. Where a notice is issued that does not comply with the requirements in s.107, the power to cancel the visa does not arise. Extracts of the Act relevant to this case are attached to this decision.
37. In the present matter, the Tribunal is satisfied that the delegate had reached the necessary state of mind to engage s.107 and that the notice issued under s.107 complied with the statutory requirements.

Was there non-compliance as described in the s.107 notice?

38. The issue before the Tribunal is whether there was non-compliance in the way described in the s.107 notice, being the manner particularised in the notice, and if so, whether the visa should be cancelled. The non-compliance identified and particularised in the s.107 notice was non-compliance with s.101 and s.104 of the Act. The details of the non-compliance as alleged by the Department are set out above.

Change of circumstances to be notified – birth of twins

39. The evidence is that after the applicant applied for the Prospective Marriage visa on 5 September 2003 his sponsor gave birth to twins on 9 November 2004. The father of the children was Ahmed Tejan Bah. The fact that the sponsor had given birth to two children is a change of circumstance making the information provided in the application incorrect as the applicant had previously stated the sponsor did not have any children. This information would be particularly relevant to the application as the fact that the sponsor had a child to another man with whom she was living while claiming to be in a relationship with the applicant, which required the applicant and Ms Bah having a mutual commitment to a shared life as husband and wife to the exclusion of all others, would be particularly significant when considering whether the parties genuinely intended to live together as spouses.
40. The applicant did not advise the Department in any way that the sponsor of his Prospective Marriage visa had two children to a different man prior to his arrival in Australia and being immigration cleared.
41. The Tribunal does not accept the submission made on behalf of the applicant that he did not have direct knowledge of what was happening in Australia. The applicant and the sponsor were cooperating in pursuing the Prospective Marriage visa application. The matter had been before the Tribunal (differently constituted) in respect of a review of the Department's decision to refuse the application. The Tribunal does not accept that if the parties were in communication with each other for any reason that the applicant would not have been aware that the sponsor had fallen pregnant to Ahmed Tejan Bah and had twins who, at the time the applicant entered Australia, were almost three years old. When the applicant arrived in Australia he acknowledged that the children were living with the sponsor. The Tribunal does not accept that, if the applicant did not know prior to his arrival in Australia that the sponsor had two children, he would not have taken some action immediately upon his arrival in Australia if he found the person with whom he claimed to have been in a genuine and continuing and exclusive relationship since 1999 had two children to another man.
42. The applicant claimed that he did not know he was required to contact the Department. The Tribunal does not accept that, if this is the case, ignorance of the requirement to advise the Department of any change of circumstance means that it can be concluded the requirements of s.104 of the Act have been met. It is the responsibility of all applicants to be aware of the requirements when applying for a visa and the conditions of any visa granted to them. In the instructions provided with the application, which the applicant returned to the Department

with his application, it states that if his circumstances should change he must inform the Department in writing. The applicant did nothing after the birth of the sponsor's twins to advise the Department in any way of this change in circumstance.

43. The Tribunal finds the applicant did not advise the Department of the change in circumstances from the information provided in his application, so the answers provided were incorrect as the sponsor had two children to another man after the applicant applied for the Prospective Marriage visa and before he entered Australia. The Tribunal finds for this reason that the applicant has not complied with s.104 of the Act.

Visa applications to be correct – children of the sponsor

44. After the applicant arrived in Australia and before he applied for his Partner visa on 29 October 2007, his sponsor gave birth to a third child with Ahmed Tejan Bah. That child was born on 5 September 2007. At the time of the application, therefore, the sponsor had three children to Ahmed Tejan Bah with the last child being born less than two months before the application was filed. In his application, the applicant was required to provide his partner's family details. Although the applicant provided details of Ms Bah's parents and brother, the applicant failed to provide any details of her children.
45. The provision of information as to the sponsor's children is fundamental to the application as it allows the Department to consider whether the parties are in a genuine and continuing relationship and whether the parties have a mutual commitment to a shared life as husband and wife to the exclusion of all others. The fact that the applicant failed to provide any information about his sponsor's children would have undermined and frustrated any proper assessment of whether the applicant was the spouse of the sponsoring partner as defined in s.5F of the Act.
46. The applicant acknowledged that he did not provide this information in his application. The applicant claimed that he did not understand the question in the application. He claimed that when he read that he was required to provide details about 'All your partner's children' he was not sure if he was required to provide details of his former wife's children or his sponsor's children. He claimed that his lack of English made it difficult for him to understand what information he was required to provide. The Tribunal does not accept this.
47. The part of the application form where the applicant is required to provide details of his partner's children is headed: 'Your partner's family details'. In response to the requirement to provide information about 'Your partner's parents' the applicant was able to correctly provide details of the sponsor's parents. In response to the requirement to provide 'All your partner's brothers and sisters' the applicant was again able to correctly provide details of the sponsor's brother. The Tribunal does not accept that if the applicant was able to correctly provide details of the sponsor's parents and brother that he would not have understood that he would be required to provide details of the sponsor's children.
48. The Tribunal finds that the applicant deliberately failed to provide this information as to do so would undermine his claim that he had been in a genuine and continuing and exclusive relationship with the sponsor since 1999. This was particularly so when she had given birth to a child to Ahmed Tejan Bah less than two months prior to the application being filed and was living with the father of her children. The Tribunal finds that by failing to provide details of the sponsor's children the applicant has failed to complete his application in a way that all questions on it are answered correctly and further he has deliberately failed to provide this information to the Department so as to convey a false impression of the claimed relationship. The Tribunal finds the applicant has failed to comply with s.101 of the Act.

49. The documents provided in support of the application maintained the incorrect claim that the sponsor did not have any children. The sponsor provided a Form 40SP in support of the application for the Prospective Marriage visa. This form was signed on 29 May 2007. In that document the sponsor is required to provide information about her home. She states that there are two people living in her dwelling. She identifies the second person as a 'friend'. She is required to declare whether she has any dependents. She ticked the box marked 'No' and failed to provide any answer as to the number of her dependent children.
50. This information is incorrect as the applicant had, at the time of signing this document and when it was provided to the Department, two children with whom she was living. The Tribunal finds that the response in this document incorrectly answered questions and accordingly incorrect information was given by the applicant. The Tribunal finds that the information provided in this document failed to comply with s.101 of the Act.
51. In the Form 40SP signed by the sponsor on 22 October 2007 in support of the Partner visa application, the sponsor claimed that she had five people living in her dwelling. As the applicant and his two children were claiming to be living with the sponsor at that time, the sponsor identified only one other person. As the sponsor was living with her twins and third child at the time, as was confirmed by the applicant, the sponsor was not referring to her children and was more than likely referring to her 'friend' who she had identified in the Form 40SP signed by her on 29 May 2007. The Tribunal finds the 'friend' living with Ms Bah was the father of her children, Ahmed Tejan Bah, with whom she was in a continuing relationship.
52. In that same form, the sponsor was required to provide details of any dependents. In answer to this question, the sponsor ticked the box marked 'No' and in response to the question asking her to provide the number of her dependent children she did not provide any answer. This is incorrect as at the time the sponsor signed this document she had three dependent children from a relationship with Ahmed Tejan Bah.
53. The Tribunal finds that through the sponsor's failing to disclose her children, the applicant has failed to answer all questions and provided incorrect answers in the sponsorship documents and therefore has not complied with s.101 of the Act.

Visa applications to be correct – exclusive relationship Subclass 820 visa

54. Although acknowledging that the sponsor had three children with Ahmed Tejan Bah at the time the applicant applied for the Partner visa, the applicant denied that the sponsor was living with Ahmed Tejan Bah. He claimed that both he and the sponsor had a mutual commitment to a shared life as husband and wife to the exclusion of all others. The Tribunal does not accept this.
55. The birth certificates for the children of the sponsor all identify the father of the children as Ahmed Tejan Bah. The birth certificates of the twins state that their parents were living together in a home in Riverwood. The birth certificate for the child born on 5 September 2007, less than two months before the application for the Partner visa was filed, shows that both parents were living together at the address in Revesby where the applicant was claiming to live with the sponsor.
56. The sponsor in the sponsorship document she signed on 29 May 2007 states that she was living in her home with a 'friend'. Although not identifying this person, the Tribunal finds the person she was referring to was Ahmed Tejan Bah. In the sponsorship document signed on 22 October 2007 she identifies five people as living at her address. As she was claiming to live with the sponsor and his two children, this means she was identifying only one other person as living in her household. She did not identify her three children as living in her home. As she had previously claimed that she was living with a 'friend', the Tribunal finds

that in claiming that five people were living in her dwelling she was identifying Ahmed Tejan Bah as also living in her home.

57. The applicant denied that Ahmed Tejan Bah was ever living in the home with his sponsor when he was in Australia. He claimed the information in the birth certificates was incorrect and that Ahmed Tejan Bah was not living with the sponsor when the children were born. The Tribunal does not accept this. There is no reason why the sponsor and Ahmed Tejan Bah would have provided incorrect information in the birth certificates and, in particular, about where they claimed to be residing. In the birth certificate for their fourth child, Ahmed Tejan Bah provided a different address to that of the sponsor. This indicates that if Ahmed Tejan Bah was not living with the sponsor when their third child was born on 5 September 2007 and the information was provided for the registration of that child on 21 September 2007 that Ahmed Tejan Bah would have stated that he was not at the same address as the sponsor. That the sponsor and Ahmed Tejan Bah stated in that birth certificate that they were living together in the home in which the applicant claimed to have been living with the sponsor supports a finding that the sponsor and Ahmed Tejan Bah were living together in a de facto relationship in that home with their three children at the time the applicant applied for the Partner visa.
58. The Tribunal finds that at the time the Partner visa application was filed the sponsor was in a continuing relationship with Ahmed Tejan Bah. She had three children with Ahmed Tejan Bah with their third child being born less than two months prior to the application being filed. She was living with Ahmed Tejan Bah in their shared residence at Revesby. Although the full nature of that relationship cannot be clearly ascertained, the Tribunal finds that the nature of the continuing relationship the sponsor had with Ahmed Tejan Bah means that she was not in an exclusive relationship with the applicant.
59. At Question 70 of the Partner visa application, the applicant is asked to provide information as to when and where he began a spouse relationship with his partner. The definition of a spouse is provided including that it is a relationship between a couple who have a mutual commitment to a shared life to the exclusion of any other spouse relationship or any other interdependent relationships. The applicant failed to provide this information. In his application he claims that he is the spouse of the sponsoring partner. As the Tribunal has found that the sponsor was not in an exclusive relationship with the applicant but had a continuing relationship with Ahmed Tejan Bah the Tribunal finds that the applicant has failed to comply with s.101 of the Act. The Tribunal finds the applicant's failure to answer that question and provide information claiming that he was the spouse of the sponsoring partner, which included a requirement that they have a mutual commitment to a shared life to the exclusion of all others, resulted in his Subclass 820 visa application being incorrect.

Visa applications to be correct – exclusive relationship Subclass 801 visa

60. The applicant and the sponsor provided statutory declarations dated 15 September 2009 in support of the grant of the Subclass 801 Partner (Residence) visa stating that they were committed to a shared life as husband and wife to the exclusion of all others. As the sponsor had three children from her relationship with Ahmed Tejan Bah before 2007 and they had a further two children born on 3 January 2011 and 4 September 2013 it was alleged that the information provided in the statutory declarations by the applicant and the sponsor were incorrect.
61. Although the Tribunal has significant concerns as to whether the applicant and the sponsor were ever in a genuine relationship, the Tribunal is not satisfied that the evidence before it can make a positive finding that the information provided by the applicant and the sponsor in September 2009 was incorrect.

62. The basis of the finding that the sponsor was not in an exclusive relationship with the applicant was the fact that she had children with Ahmed Tejan Bah both before and after those statements were made. The child born on 3 January 2011 was born more than a year after the statements by the applicant and the sponsor were made. The birth certificate states that the sponsor and Ahmed Tejan Bah were not living in a shared residence at the time of the birth. The birth certificate for their fifth child who was born on 4 September 2013 shows the sponsor and Ahmed Tejan Bah residing at the same address in Revesby.
63. There is no clear evidence as to the nature of the relationship between the sponsor and Ahmed Tejan Bah from the time of the birth of their third child on 5 September 2007 until the birth of their fourth child on 3 January 2011. As the sponsor and Ahmed Tejan Bah were not living together in the same residence it appears that they had at least some periods of separation.
64. As indicated above, the Tribunal has significant concerns as to whether the applicant and the sponsor were ever in a genuine and continuing relationship or ever had a mutual commitment to a shared life as husband and wife to the exclusion of all others. The Tribunal is not satisfied, however, on the basis of the information of the birth certificates of the sponsor's children that at the time the applicant and the sponsor made statutory declarations in September 2009 that the sponsor was in any relationship with Ahmed Tejan Bah. Accordingly, the Tribunal is not satisfied that the information provided in those statements was incorrect.

Summary of findings on non-compliance

65. The Tribunal finds that there was non-compliance with s.104 of the Act when the applicant failed to advise the Department of a change of circumstances after the sponsor gave birth to twins on 9 November 2004 after he filed his Prospective Marriage visa application but before he was immigration cleared.
66. The Tribunal finds that there was non-compliance with s.101 of the Act when the applicant failed to answer questions and provide information about the three children of the sponsor who had been born before the Partner visa application had been filed.
67. The Tribunal finds that there was non-compliance with s.101 of the Act when the applicant applied for the Partner visa in October 2007 and claimed that he was the spouse of the sponsoring partner which required the applicant and the sponsor to have a mutual commitment to a shared life as husband and wife to the exclusion of all others. The Tribunal finds that at that time the sponsor was in a continuing relationship with Ahmed Tejan Bah and not in an exclusive relationship with the applicant.
68. The Tribunal is not satisfied that in 2009 when the applicant and the sponsor provided statements claiming they were in a continuing relationship that the sponsor was at that time in a relationship with Ahmed Tejan Bah. Accordingly, the Tribunal is not satisfied there was non-compliance with s.101 of the Act in those circumstances.
69. For these reasons, the Tribunal finds that there was non-compliance with s.101 and s.104 of the Act by the applicant in the way described in the s.107 notice.

Should the visa be cancelled?

70. As the Tribunal has decided that there was non-compliance in the way described in the notice given to the applicant under s.107 of the Act, it is necessary to consider whether the visa should be cancelled pursuant to s.109(1). Cancellation in this context is discretionary, as there are no mandatory cancellation circumstances prescribed under s.109(2).

71. In exercising this power, the Tribunal must consider the applicant's response (if any) to the s.107 notice about the non-compliance, and have regard to any prescribed circumstances: s.109(1)(b) and (c).
72. While these factors must be considered, they do not represent an exhaustive statement of the circumstances that might properly be considered to be relevant in any given case: *MIAC v Khadgi* (2010) 190 FCR 248. The Tribunal may also have regard to lawful government policy. The relevant policy is set out in the Department's Procedures Advice Manual (PAM3) 'General visa cancellation powers', which refers to matters such as the consequences of cancelling the visa, international obligations and any other relevant matters. The Tribunal has addressed each of the prescribed circumstances together with an overall assessment of whether the applicant's visa should be cancelled.

The correct information

73. The correct information is that after the applicant applied for the Prospective Marriage visa, but before he entered Australia, the sponsor had twins with Ahmed Tejan Bah. The Tribunal finds that the applicant was aware, before he entered Australia, that the sponsor had children with Ahmed Tejan Bah and that she was pregnant again with his child.
74. The correct information is that at the time the applicant applied for the Partner visa the sponsor had three children with Ahmed Tejan Bah, the third child being born less than two months prior to the application being made.
75. The correct information is that at the time of the application the sponsor was in a continuing relationship with Ahmed Tejan Bah and was living with him and that the applicant and the sponsor did not have a mutual commitment to a shared life as husband and wife to the exclusion of all others.

The content of the genuine document

76. This is not relevant to the present case.

Whether the decision to grant a visa was based wholly or partly on incorrect information

77. For a Prospective Marriage visa to be granted, the parties must genuinely intend to live together as spouses. For a Partner visa to be granted on the basis of the parties being married, the applicant must be the spouse of the sponsoring partner. The definition of a spouse in s.5F of the Act requires that the parties be in a genuine and continuing relationship and that they have a mutual commitment to a shared life as husband and wife to the exclusion of all others.
78. The parties claimed that their relationship began in 1999. The fact that the sponsor, after the application was filed, had children with Ahmed Tejan Bah is clear evidence that the parties did not have a mutual commitment to a shared life to the exclusion of all others. If the information that the sponsor had two children with Ahmed Tejan Bah was provided to the Department it is not likely that the Department would have found that the parties did genuinely intend to live together as spouses and the applicant would not have been granted the Prospective Marriage visa.
79. If the information had been provided when the applicant applied for the Partner visa, that the applicant had two children with Ahmed Tejan Bah in 2004 and had given birth to their third child two months prior to the Partner visa application being made, it is not likely that the parties would have been found to be in a genuine and continuing relationship or that they had a mutual commitment to a shared life as husband and wife to the exclusion of all others.

The failure to provide this information prevented the Department from properly assessing the Partner visa application and the true circumstances of any claimed relationship the applicant and the sponsor had with each other.

80. Due to the significant nature of this information, particularly when the sponsor had a child with Ahmed Tejan Bah less than two months prior to the application being made and the sponsor and Ahmed Tejan Bah were living together at that time, the Tribunal finds the decision to grant the visa was based wholly or partly on the incorrect information provided which was that the sponsor did not have any children.

The circumstances in which the non-compliance occurred

81. The applicant provided a variety of reasons to explain his failure to provide information as to the children of the sponsor. This has included that he was confused as to the question as to whose children he was required to disclose when asked to provide details of 'All your partner's children'. He also claimed that he then forgot to provide this information before applying for the visa. He also claimed that due to his lack of English language skills he was not able to understand the requirements of the application. He claimed that he did not have any 'direct knowledge' of the fact that the sponsor had twins prior to his arrival in Australia on a Prospective Marriage visa. These claims have been discussed above when considering whether there had been compliance with ss.101 and 104 of the Act. The Tribunal does not accept any of the claims made by the applicant as an excuse for the non-compliance.
82. The Tribunal finds that the applicant deliberately failed to provide the information as he was aware that by advising the Department that the sponsor had two children with Ahmed Tejan Bah prior to his arrival in Australia, and a third child with Ahmed Tejan Bah less than two months prior to the Partner visa application being filed, this would show that he and Ms Bah were not in a genuine and continuing relationship or that they had a mutual commitment to a shared life as husband and wife to the exclusion of all others. The Tribunal does not accept that the applicant did not understand the questions being put to him when he was required to provide details of his partner's children. The Tribunal finds the applicant was aware the provision of the correct information would adversely affect his application. The Tribunal finds the applicant deliberately failed to provide this information as he was not in a genuine and continuing or exclusive relationship with the sponsor. The Tribunal finds that the applicant deliberately failed to answer questions and provided incorrect answers in order to obtain an immigration outcome.
83. The Tribunal finds the applicant has continued to provide false information to the Tribunal by failing to acknowledge that when he arrived in Australia and at the time he applied for the Partner visa application the sponsor was continuing to live with the father of her children, Ahmed Tejan Bah, in her home in Revesby. The Tribunal finds that the applicant has been deliberately untruthful with the Department and with the Tribunal throughout his Prospective Marriage visa application, his Partner visa application and in his response to the notice of intention to consider cancelling his visa.

The present circumstances of the visa holder

84. The applicant has been living in Australia since August 2007, a period of over 12 years. It would be expected that the applicant has developed some cultural and community ties in Australia and has obtained the benefit of living in Australia. His children, who are currently 20 and 22 years old, reside in Australia. The applicant has limited contact with his children. They are both independent of him and do not live with him. He claimed that he sees his children every two or three weeks. There is little information as to their circumstances. As the question is whether the applicant's Subclass 155 Resident Return visa should be cancelled, if that visa is cancelled his children's Subclass 801 Partner (Residence) visas will not be

cancelled as a consequence. It is likely that if the applicant's visa is cancelled the children would remain living in Australia and the separation from their father would cause some distress for both the applicant and his children. The applicant has no other relatives residing in Australia.

85. The applicant stated that he was living alone and, apart from the social interaction he has at work, he does not participate in any other activities in Australia or have any friends in Australia. He claimed to be a valued employee. He provided details of his employment to the Tribunal.
86. The applicant is married to a woman in Guinea who he sponsored for a Partner visa. That application was refused by the Department. He claims to speak to his wife in Guinea each day and claims to provide financial support to her and they provide each other great emotional support. If he returned to Guinea, it would be expected that he would continue to receive this emotional support. The applicant's sister and her family live in Guinea. There is no information before the Tribunal that the applicant's wife or sister has any difficulties living in Guinea apart from the lower socio-economic conditions which all people living in Guinea are subject to.

Subsequent behaviour of the applicant

87. The applicant responded to the notice of intention to consider cancellation. The applicant, through his agent, made certain implausible claims, including that the birth certificates were based on fraudulent information given by the sponsor and Ahmed Tejan Bah. No explanation was given as to why fraudulent information would have been provided for their children's birth certificates at the time those certificates were issued.
88. The applicant has also made claims that he was confused as to how to answer the requirement to provide information about his partner's children. The applicant's claim that he was not sure whether he should be providing information about his sponsor's children or his ex-wife's children (that is his own children) is disingenuous and is not plausible. The claim that he then forgot to provide the information is again not plausible. That he continued to make such a claim after there was clear evidence that he had not answered the question correctly does him no credit.

Other instances of non-compliance

89. There is no information before the Tribunal that the applicant has failed to comply with any requirements since he was granted his Subclass 801 Partner (Residence) visa.

Time elapsed since non-compliance

90. The applicant has been residing in Australia since he arrived in August 2007. He has now been residing in Australia for over 12 years. Over that period, he has returned to Guinea on two occasions for periods of over a month on each occasion.

Any breaches of the law

91. There is no information before the Tribunal which would indicate that the applicant has been anything but a law-abiding citizen while living in Australia.

Contribution to the community

92. The applicant has been employed in a factory and described himself as being a valued employee. He provided evidence of his employment and certificates he has obtained while

being employed. He has not provided any reference from his employer which would indicate that his position cannot be replaced or any assessment of his value to the company.

93. The applicant said that apart from his work he is not involved in any other activities within the Australian community. He claimed that he had no friends or contact with other people in Australia and has little contact with his children as they are always busy. Although the Tribunal accepts that the applicant may be a valued employee, there was little information that the applicant has made any further contribution to the Australian community.

Other issues

94. As indicated above, the applicant has two children who reside in Australia and are currently aged 20 and 22 years old. Little information was provided as to their current circumstances. They are independent of the applicant and, if the applicant's visa is cancelled, their visas will not be subject to cancellation. The Tribunal accepts that if the applicant's visa is cancelled this will cause some difficulty for the applicant and his children as it is likely they will be separated. As they are young adults, there is nothing which would indicate that the cancellation of the applicant's visa will be in breach of any of Australia's international agreements.
95. If the applicant's visa is cancelled it is likely that he would be required to depart Australia. The applicant would have limited opportunities to be able to apply to return to live in Australia and would be likely to be subject to a restriction for the grant of a further visa for a three-year period. No information has been provided of the applicant being entitled to the grant of any other visa. It is possible that he may be able to apply for a Parent visa, however, if he were sponsored by one of his children for that visa there would be significant expense involved, if it was a Contributory Parent visa, or an extended delay for any other application. There is no information as to whether either of the applicant's children would be willing or able to sponsor the applicant for such a visa.
96. The applicant would be likely to face harsher economic conditions if he were required to return to Guinea. He claims to be supporting his wife who he was previously sponsoring for a Partner visa. If he were required to return to Guinea it is likely that his income would be reduced which would affect his capacity to meet his own expenses as well as the expenses of his wife. The applicant did not raise any issues which would prevent him from returning to live in Guinea apart from the harsh economic conditions and indicated that both his wife and sister lead normal lives there.

Overall assessment

97. The Tribunal has considered all the circumstances of the applicant both individually and cumulatively. The Tribunal accepts that if the applicant's visa were cancelled and he were required to return to Guinea the applicant would suffer a decrease in living standards and a capacity to earn an income. This would also adversely affect his capacity to provide financial support to his wife. He would be separated from his children.
98. Against this, however, is the significant failure by the applicant to provide information as required in the application and his failure to provide information as to changed circumstances after the Prospective Marriage visa application was filed. The Tribunal finds the applicant deliberately failed to provide the information about the children of the sponsor as he was aware that this would indicate that he was not in a genuine and continuing relationship with the sponsor and that they did not have a mutual commitment to a shared life as husband and wife to the exclusion of all others. The Tribunal finds the applicant was deliberately deceiving the Department to obtain an immigration outcome on the basis of a Partner visa application when he was not in a genuine relationship with his sponsor.

99. The Tribunal finds that significant weight must be placed on the deliberate actions of the applicant to deceive the Department while his Prospective Marriage visa application was being assessed and when applying for his Partner visa application. The integrity of Australia's immigration laws rely on applicants providing correct information in support of their application and advising the Department of any change of circumstance. The actions of the applicant were taken over an extended period of time, and were deliberate, planned and undertaken in conjunction with actions of the sponsor to deceive the Department as to the claimed relationship. Although the applicant claims that he is sorry for failing to provide the correct information, the Tribunal finds that the applicant's regret is that he is now facing the consequences for that failure to provide the correct information rather than for his deliberate actions to deceive the Department.
100. For the above reasons, the Tribunal has decided that there was non-compliance by the applicant in the way described in the notice given under s.107 of the Act. Further, having regard to all the relevant circumstances, as discussed above, the Tribunal concludes that the visa should be cancelled.

DECISION

101. The Tribunal affirms the decision to cancel the applicant's Subclass 155 (Five Year Resident Return) visa.
102. Hugh Sanderson
Member

ATTACHMENT – *Migration Act 1958* (extracts)

5 Interpretation

(1) In this Act, unless the contrary intention appears:

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly.

97 Interpretation

In this Subdivision:

application form, in relation to a non-citizen, means a form on which a non-citizen applies for a visa, being a form that regulations made for the purposes of section 46 allow to be used for making the application.

passenger card has the meaning given by subsection 506(2) and, for the purposes of section 115, includes any document provided for by regulations under paragraph 504(1)(c).

Note: **Bogus document** is defined in subsection 5(1).

98 Completion of visa application

A non-citizen who does not fill in his or her application form or passenger card is taken to do so if he or she causes it to be filled in or if it is otherwise filled in on his or her behalf.

99 Information is answer

Any information that a non-citizen gives or provides, causes to be given or provided, or that is given or provided on his or her behalf, to the Minister, an officer, an authorised system, a person or the Tribunal, or the Immigration Assessment authority, reviewing a decision under this Act in relation to the non-citizen's application for a visa is taken for the purposes of section 100, paragraphs 101(b) and 102(b) and sections 104 and 105 to be an answer to a question in the non-citizen's application form, whether the information is given or provided orally or in writing and whether at an interview or otherwise.

100 Incorrect answers

For the purposes of this Subdivision, an answer to a question is incorrect even though the person who gave or provided the answer, or caused the answer to be given or provided, did not know that it was incorrect.

101 Visa applications to be correct

A non-citizen must fill in or complete his or her application form in such a way that:

- (a) all questions on it are answered; and
- (b) no incorrect answers are given or provided.

104 Changes in circumstances to be notified

- (1) If circumstances change so that an answer to a question on a non-citizen's application form or an answer under this section is incorrect in the new circumstances, he or she must, as soon as practicable, inform an officer in writing of the new circumstances and of the correct answer in them.
- (2) If the applicant is in Australia at the time the visa is granted, subsection (1) only applies to changes in circumstance before the visa is granted.
- (3) If the applicant is outside Australia at the time the visa is granted, subsection (1) only applies to changes in circumstances after the application and before the applicant is immigration cleared.
- (4) Subsection (1) applies despite the grant of any visa.

107 Notice of incorrect applications

- (1) If the Minister considers that the holder of a visa who has been immigration cleared (whether or not because of that visa) did not comply with section 101, 102, 103, 104 or 105 or with subsection (2) in a response to a notice under this section, the Minister may give the holder a notice:
 - (a) giving particulars of the possible non-compliance; and
 - (b) stating that, within a period stated in the notice as mentioned in subsection (1A), the holder may give the Minister a written response to the notice that:
 - (i) if the holder disputes that there was non-compliance:
 - (A) shows that there was compliance; and
 - (B) in case the Minister decides under section 108 that, in spite of the statement under sub-subparagraph (A), there was non-compliance—shows cause why the visa should not be cancelled; or
 - (ii) if the holder accepts that there was non-compliance:
 - (A) give reasons for the non-compliance; and
 - (B) shows cause why the visa should not be cancelled; and

- (c) stating that the Minister will consider cancelling the visa:
 - (i) if the holder gives the Minister oral or written notice, within the period stated as mentioned in subsection (1A), that he or she will not give a written response—when that notice is given; or
 - (ii) if the holder gives the Minister a written response within that period—when the response is given; or
 - (iii) otherwise—at the end of that period; and
- (d) setting out the effect of sections 108, 109, 111 and 112; and
- (e) informing the holder that the holder's obligations under section 104 or 105 are not affected by the notice under this section; and
- (f) requiring the holder:
 - (i) to tell the Minister the address at which the holder is living; and
 - (ii) if the holder changes that address before the Minister notifies the holder of the Minister's decision on whether there was non-compliance by the holder—to tell the Minister the changed address.
- (1A) The period to be stated in the notice under subsection (1) must be:
 - (a) in respect of the holder of a temporary visa—the period prescribed by the regulations or, if no period is prescribed, a reasonable period; or
 - (b) otherwise—14 days.
- (1B) Regulations prescribing a period for the purposes of paragraph (1A)(a) may prescribe different periods and state when a particular period is to apply, which, without limiting the generality of the power, may be to:
 - (a) visas of a stated class; or
 - (b) visa holders in stated circumstances; or
 - (c) visa holders in a stated class of people (who may be visa holders in a particular place); or
 - (d) visa holders in a stated class of people (who may be visa holders in a particular place) in stated circumstances.
- (2) If the visa holder responds to the notice, he or she must do so without making any incorrect statement.

108 Decision about non-compliance

The Minister is to:

- (a) consider any response given by a visa holder in the way required by paragraph 107(1)(b); and
- (b) decide whether there was non-compliance by the visa holder in the way described in the notice.

109 Cancellation of visa if information incorrect

- (1) The Minister, after:
 - (a) deciding under section 108 that there was non-compliance by the holder of a visa; and
 - (b) considering any response to the notice about the non-compliance given in a way required by paragraph 107(1)(b); and
 - (c) having regard to any prescribed circumstances;
 may cancel the visa.
- (2) If the Minister may cancel a visa under subsection (1), the Minister must do so if there exist circumstances declared by the regulations to be circumstances in which a visa must be cancelled.